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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1592nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 16 July 1997, at 3 p.m.

Chairman: Mrs. CHANET

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1592/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Slovakia (continued) (CCPR/C/81/Add.9; CCPR/C/60/Q/SLO/4)

1. At the invitation of the Chairman, the members of the delegation of Slovakia took places at the Committee table.

2. The CHAIRMAN invited the members of the Committee to ask orally any additional questions they had concerning the second part of the list of issues (CCPR/C/60/Q/SLO/4).

3. Mrs. MEDINA QUIROGA said that she would like to know the extent of the jurisdiction of the military courts, referred to in paragraph 39 of the report (CCPR/C/81/Add.9). She asked whether they operated in peacetime, whether they could try civilians and whether they had jurisdiction over ordinary-law offences committed by military personnel.

4. She shared the concerns expressed by other members of the Committee regarding the independence of the judiciary in Slovakia. It was her understanding that the Ministry of Justice could appeal against a final court decision if it was contrary to the law, in both criminal and civil cases. However, since judges were elected by parliament, to which the Ministry of Justice was also responsible, it was surprising that such dual powers should exist; she would welcome clarification.

5. Regarding the implementation of article 17 of the Covenant, and more particularly the provisions of Slovak legislation authorizing the interception of correspondence and telephone-tapping, there was apparently no need for such measures to be ordered by a judge. She asked whether that was the case and, if so, how that situation was justified.

6. Regarding the implementation of article 18 of the Covenant, it was stated in paragraph 67 of the report that the State provided registered churches and religious societies with financial and other support that "exceeds the framework of fundamental rights". She had difficulty understanding why the Slovak authorities granted subsidies to some religious associations rather than others; the situation seemed wholly incompatible with the provisions of the Covenant.

7. Finally, she associated herself with the questions on conscientious objection asked during the previous meeting.

8. Mr. SCHEININ noted that the Slovak delegation had provided information on the sexual exploitation of juveniles in Slovakia, but had given no information on efforts to prevent or end the exploitation of Slovak children abroad. Relevant information would be appreciated. Where stateless children were concerned, it had been reported that people had given up their Slovak nationality to apply for Czech nationality, which they had been refused. If they had been living in the Czech Republic when their child had been born, the

child would not have Slovak nationality. He asked whether there was any international cooperation to ensure that all children in that situation obtained either Czech or Slovak nationality.

9. He would also like to know whether it was true that tapping a telephone line during the pre-trial proceedings did not require the prior authorization of a judge. If such was the case, it could be assumed that the person whose telephone conversations were being tapped was unaware of the fact, and that consequently there was no possibility of the practice being subject to judicial control.

10. Regarding the implementation of article 9 of the Covenant, he asked whether the legislation governing all forms of administrative detention was wholly compatible with the provisions of article 9, paragraph 4, of the Covenant, particularly in the case of aliens and military personnel on whom disciplinary measures had been imposed.

11. He asked whether conscientious objectors were in any way incorporated into military units, and how the authorities justified the decision to extend civilian service to two years - twice as long as military service.

12. Mr. YALDEN said that he would like to take up the question of the ombudsman. He asked whether the Slovak authorities had contacted either the United Nations Centre for Human Rights or any other international mediation agencies on the subject, as they were well documented and could provide valuable assistance. As had frequently been pointed out, while it was essential to have adequate legislation, it was the application of the legislation that ensured respect for human rights. There was no doubt about the determination of the Slovak authorities to introduce mediation machinery, but he would encourage them to put more life into what still appeared to be a sluggish procedure.

13. On the question of the language rights of minorities, the Constitution seemed to guarantee them the right to use their own language in official communications. The same guarantee had also been included in a 1990 Act, which had been repealed with the adoption of a new Act in 1996. Apparently the latter Act did not set forth the right of minorities to use their language in their dealings with the public authorities. Currently, civil servants were required to use the official language in official communications, a provision that was apparently not in conformity with either the Constitution or the practice followed until 1996. He urged the authorities to dispel any ambiguity in the legislation and pointed out that language rights were of vital importance to minorities.

14. Mrs. EVATT said that, in the light of the information provided by the Slovak delegation, she was concerned about the exercise of the right of freedom of association in Slovakia. The delegation had said that freedom of association could, in certain cases, be subject to major restrictions, particularly in financial terms, and she found it difficult to understand how such restrictions were compatible with article 22 of the Covenant, and in particular paragraph 2 of that article.

15. Where the registration of political parties and associations was concerned, she asked whether there was any possibility of a judicial or administrative appeal against refusal of an application for registration, and what provisions guaranteed that the registration procedure respected the principles set forth in the Covenant.

16. Mr. BUERGENTHAL said that, despite a number of reminders, the Slovak Government had failed to reply to a request from the Committee for information concerning a communication submitted under the Optional Protocol. He asked who was responsible for such matters within the Government, and whether the Committee would be able to count on the cooperation of the Slovak authorities in future.

17. Mr. JEZOVICA (Slovakia) said, in reply to a question on the time-limits established by law for submitting an application for conscientious objector status, that they must be reasonable and satisfy the requirements of the State bodies responsible for recruitment. Some members of the Committee had also asked whether the length of civilian service was not excessive. Civilian service was in fact performed in the State's civil institutions and within local administrations, and not in military units. The length of civilian service had been set at two years to ensure the stability of the institutions concerned, as it was impossible to provide a statistical forecast of the number of applicants for civilian service or to determine which regions would be concerned. Civilian service was in no way punitive.

18. Questions had been asked about the articles of the Constitution concerning international instruments, and in particular the human rights instruments. There was an order of precedence among Slovak enactments, which were nevertheless linked. When an Act was determined to be in conformity with an international treaty to which Slovakia was a party, any subsidiary legislation adopted on the basis of that Act must also be in conformity with the international instrument. The "generally binding rules" referred to in the report designated all the Acts and other legislation of the Republic, which were built around the Constitution. A question had been asked about the interpretation of constitutional provisions whereby international instruments protecting broader rights than those set forth in domestic legislation took precedence. He would emphasize that as a rule the Government was required to ensure that any bill or act applied in a specific case was in conformity with the international instruments in force for Slovakia. When the legislature had used the expression "broader rights", it had probably had in mind instances in which a domestic law conflicted with international norms. The Constitution was an evolving instrument, was perfectible and reflected the actual situation in the country and judicial practice; there was no doubt that the terms referred to above would be duly clarified in the future.

19. In reply to Mr. Scheinin's question about children who were stateless because their parents, having given up Slovak nationality, had not obtained Czech nationality, he observed that the situation was a delicate one: on the one hand, the persons concerned had voluntarily given up Slovak nationality but, on the other, the Slovak State had to obtain clear indications from the Czech authorities that those persons would obtain Czech nationality. That created a conflict of obligations for the State, and there was no doubt that

the problem would have to be solved within the framework of an agreement between the two States. The solution would depend on the good will of each of them.

20. Regarding the sexual exploitation of children, a few months previously the Slovak authorities had set up a special unit to prevent and punish that crime, both at home and abroad. That unit cooperated with various international institutions, in particular INTERPOL, and the authorities were endeavouring to ensure that the requisite measures were taken.

21. In reply to the question on the registration of parties and associations, he said that the decisions taken by the Ministry of the Interior could be reviewed by a judicial organ.

22. Mr. GREXA (Slovakia) said that he had taken due note of the concerns expressed about the registration procedure for religious associations and the requirement that they should have at least 20,000 adherents. In Slovakia too, there were those who considered that figure too high. The law was in fact due to be amended shortly in order to lower the figure. Religious freedom was guaranteed by the Constitution, and as a result everyone had the right to set up a religious association, sect, etc., but the State could refuse to recognize it.

23. A question had been asked about the subsidies to registered churches and religious associations. The subsidies were granted on a monthly basis and were provided for in the State budget, under a section managed by the Ministry of Culture. They were essentially used to pay the salaries of clergy and other staff. Churches and religious associations could also request special subsidies, for example to restore places of worship listed as historic monuments. Regarding the proportion of the population that belonged to a registered church or religious association, there were only estimates of their number, as churches and religious associations were not required to report on the size of their membership. It was estimated that approximately 75 per cent of the population were members of a church or religious association and that 20 per cent were atheists.

24. Regarding the restitution of church property, it should be mentioned that only registered churches and associations had been able to benefit from the legislation on restitution. Institutions that were not registered could nevertheless submit an application under the General Act relating to the return of property, on the same terms as any other physical or legal person and provided they possessed an instrument of title.

25. The military courts were an integral part of the judicial system and also sat during peacetime. They had jurisdiction over serving military personnel, and over civilians in respect of a small number of offences (notably spying and disclosure of State secrets).

26. Article 67 of the Penal Code provided for the non-applicability of statutory limitation to crimes against humanity, and in particular war crimes. Crimes against humanity included, inter alia, genocide, torture or other cruel or inhuman treatment, persecution of the population and atrocities committed in wartime.

27. He thanked Mr. Yalden for his contribution to the Slovak authorities' examination of the institution of ombudsman. Links had been established with the relevant international institutions and Slovakia had participated in a recent UNDP workshop, at which it had presented a report. Other contacts had been established internationally on the same issue, and he hoped that the opening of a UNDP regional bureau in Bratislava would make it possible to further enhance cooperation. The Slovak authorities were receptive to any form of assistance and information on the subject.

28. In reply to Mr. Buergenthal, he suggested that the Committee should send its requests relating to the Optional Protocol to the Ministry of Foreign Affairs, and specifically to the Human Rights Department, which was in fact headed by one of the members of the Slovak delegation, Mr. Jezovica. The requests would subsequently be transmitted, if appropriate, to the competent authority.

29. Mrs. LAMPEROVA (Slovakia) said, in response to the concern expressed by some members of the Committee about the independence of judges, that the issue was highly topical in Slovakia. The radical changes that had taken place there in all spheres had led to an exceptional situation in which there was a severe shortage of judges. Judges had resigned in large numbers in order to practise more lucrative professions, for example as lawyers, and some commercial litigation which had previously come under the jurisdiction of the arbitration councils had been brought under the jurisdiction of the ordinary courts. The result had been a shortage of judges, which had compelled the Government to adopt certain measures. The appointment of judges for a four-year period was a provisional measure required by that special situation and, as such, would be terminated in the future. A keen debate was under way in Slovakia on the reorganization of the judicial system, and the Judges' Association had indicated its willingness to take part in the preparatory work for the drafting of the relevant legislation.

30. Judges' remuneration was set by law. There were three categories of judge: judges of the first-instance courts, judges of the second-instance courts (courts of appeal) and judges of the Supreme Court. Each category comprised 11 grades, corresponding to the number of years of service. The basic salary was supplemented by various allowances linked to the position held (President of the chamber, bench or court), substitution allowances and allowances for working during official holidays.

31. She wished to make it clear (since the Committee members' sources were apparently mistaken) that the Ministry of Justice could in no circumstances appeal against any judgement: only the prosecutor was authorized to appeal, and his function was wholly independent of that Ministry.

32. Lord COLVILLE said that he wished to return to a question which, in his opinion, had not been satisfactorily answered. He was still deeply concerned at the fact that the military courts had the power to try civilians in cases involving State security, a provision which, in his view, very nearly constituted a violation of article 14 of the Covenant. Such trials were extremely delicate and raised issues which could only be settled by an independent tribunal, composed of senior judges. Trials for violations of the

legislation on State security should be conducted by ordinary courts and not by military courts. He would like to know the justification for the provisions in force in Slovakia.

33. Mrs. KRASNOHORSKA (Slovakia) said that she had taken due note of Lord Colville's remarks and would pass them on to the Slovak authorities as she was not in a position to provide an explanation.

34. The CHAIRMAN invited the members of the Committee to make their concluding comments on Slovakia's report (CCPR/C/81/Add.9).

35. Mrs. EVATT thanked the Slovak delegation for its attentiveness and for the considerable amount of additional information it had provided. Much had been done in the young Slovak Republic and considerable progress had been made; however, the Committee's role was to highlight those areas which called for special attention. In her view, the prime need was to take more concrete measures in order to combat all forms of discrimination; it was not sufficient merely to refer to discrimination in the Constitution. The courts were not easily accessible to private individuals who had been subjected to discrimination, and it would be desirable to set up a mechanism offering mediation or conciliation services, particularly for discrimination in employment. Such a mechanism could also offer information, education and training programmes aimed at combating discrimination.

36. Mr. ANDO thanked the Slovak delegation for its efforts to reply to the numerous questions put to it. Consideration of Slovakia's report showed how hard the Government was striving to establish new institutions and an entirely new regime. Nevertheless, there were still several areas of doubt, particularly about the relationship between international law - especially the commitments entered into under the Covenant - and domestic legislation, the very sensitive issue of minorities and the proper balance between the desire to preserve their language and the need to make it easy for them to learn Slovak, and lastly the independence of the judiciary. All the problems to which members of the Committee had drawn attention were probably attributable to the dual upheaval Slovakia had experienced: the transition from a totalitarian regime to a democracy and its separation from a federation. That type of historic change always aroused great hopes among the population that their personal situation would change overnight, and the Slovak Government should be wary of acting impatiently or hastily. There was still a long road ahead, and the Slovak authorities must realize that the building of a human rights culture was a long-term undertaking; failure to build such a culture could mean that the shortcomings, which were normal at the current stage, would persist.

37. Mr. KLEIN thanked the Slovak delegation for its frank and open-minded participation in the dialogue with the Committee. Everyone understood perfectly well that the country was still in a difficult situation and that its institutional framework was still fragile. He emphasized the need to properly inform the public of the rights set forth in the Covenant. The task should begin at school and it would be very useful if the concluding comments prepared by the Committee when it finished considering the initial report were published and distributed. The existence of an ombudsman would also help to

establish a climate of confidence. Furthermore, it was essential to foster a broad sense of democratic behaviour in all spheres. He expressed his best wishes for the future of the people of Slovakia.

38. Mrs. MEDINA QUIROGA said she was very grateful to the Slovak delegation for having answered as many questions as possible. She associated herself with Mrs. Evatt, who had emphasized that, although there had been genuine progress, there were still various subjects of concern; she drew attention to shortcomings in the implementation of articles 3, 9, 14, 17 and 19 of the Covenant, which would be referred to in the Committee's concluding comments.

39. Mr. SCHEININ commended the Government of Slovakia, through its delegation, for a number of noteworthy achievements that were already apparent. Ratification of the Covenant was in itself a major step, and the 44 articles of the Constitution devoted to fundamental rights augured well for the future. However, legislation was not sufficient; it was necessary to pursue a resolute and coherent policy aimed at giving effect to the Covenant, and in particular to eliminate discrimination. It was no doubt too early to identify the root causes of some of the remaining problems, but one of them was perhaps the inadequate role which the judicial authorities were permitted in protecting fundamental rights. Alongside a certain decline in the authority of the Constitutional Court, it was apparent that judicial safeguards in respect of administrative detention, for example, were insufficient. The essential role of judicial control in any system of human rights protection should be stressed.

40. Mr. BHAGWATI said he welcomed the dialogue which had taken place with the representatives of Slovakia, and stressed that its primary aim was to help to improve the human rights situation. Slovakia was still in a transition phase and had so far made appreciable progress. There were obviously still areas of concern, particularly regarding the independence of the judiciary, which did not seem to be genuinely guaranteed. In addition, a major educational and training effort was required in order to disseminate the human rights culture and change attitudes and behaviour, which had included attacks against Roma. Freedom of assembly was not yet fully guaranteed. It was strongly recommended that the authorities should consider establishing an institutional mechanism to which people who felt that they were the victims of violations could turn, such as a human rights commission. He was convinced that Slovakia would make rapid progress towards providing full protection for human rights and expressed his best wishes to its people.

41. Mr. PRADO VALLEJO said that he was satisfied with the dialogue, which had been marked by the delegation's willingness to provide as much information as possible. If, as might be assumed, some difficulties were attributable to the current situation, there was reason to hope that they would rapidly disappear. Nevertheless, there were some areas that required particular attention from the Government. It should take measures to combat the torture and ill-treatment of persons under arrest by the police, supervise action to combat discrimination against women, in particular against foreign women married to refugees, and actively seek ways of improving the situation of asylum-seekers, firstly by abolishing the periods of detention of asylum-seekers awaiting a decision on their situation. The independence of

the judiciary was not guaranteed and much remained to be done in that respect. Lastly, it was impossible to overemphasize the need to implement educational programmes at all levels.

42. Mr. POCAR said that, in his view, the dialogue had been constructive. Although some questions had been left unanswered, that was hardly surprising since the regime was of recent origin. There were apparently difficulties in interpreting the Constitution. In any event, it was necessary to ensure that the Constitution was interpreted so as to ensure respect for all rights. Responsibility for interpreting the Constitution lay with the Constitutional Court, and not with the Executive. The system established in Slovakia theoretically provided all the requirements for progress in that area.

43. The CHAIRMAN thanked the members of the Slovak delegation for their willingness to answer the numerous questions put by the Committee. Consideration of initial reports always gave rise to a large number of questions, and the report of a country undergoing a period of such far-reaching transformation as Slovakia was, necessarily gave rise to even more. The political will to progress towards the implementation of all the Covenant's provisions was manifest, and a number of positive factors were worthy of note.

44. Obviously, there were still some leftovers from the former regime, particularly the problems with police behaviour, and the delegation had not attempted to conceal them. Efforts were clearly required to provide police training. Consideration must also be given to making legal counsel mandatory as soon as people were taken into custody, as it was common knowledge that most cases of torture occurred between the time of arrest and appearance in court. The questions of freedom of expression and freedom of association also required attention. The measures taken in support of minorities should be continued and it was essential to strengthen the independence of the judiciary. She was confident that the Government of Slovakia would be informed of all those recommendations.

45. Mrs. KRASNOHORSKA (Slovakia) thanked the Committee for its thorough analysis and interest; she was gratified by what in her view had been a very useful dialogue. She would not fail to inform her country's authorities of all the Committee's observations and concerns.

46. The delegation of Slovakia withdrew.

The public part of the meeting rose at 4.30 p.m.